

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 02-316
Table of Allotments,) RM-10542
FM Broadcast Stations.)
(Cedar Bluff, Virginia and Gary, West Virginia))

**REPORT AND ORDER
(Proceeding Terminated)**

Adopted: July 30, 2003

Released: August 1, 2003

By the Assistant Chief, Audio Division:

1 At the request of Monterey Licenses, LLC ("Petitioner"), licensee of Station WHQX(FM), Channel 299C3, Cedar Bluff, Virginia, the Audio Division has before it a *Notice of Proposed Rule Making*¹, proposing the reallocation of Channel 299C3 from Cedar Bluff, Virginia to Gary, West Virginia, and the modification of Station WHQX(FM)'s license accordingly. Petitioner filed comments in support of the proposal reaffirming its intention to apply for the channel, if reallocated to Gary, West Virginia. No other comments were received.

2 The proposed reallocation was filed pursuant to Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest.² As stated in the *Notice*, Gary is an incorporated city located in McDowell County, West Virginia, and has a 2000 U.S. Census population of 917 persons. It has its own mayor, police department, fire department, elementary and high schools, and several churches. Its businesses include, among others, Gary Fabrication, Inc., Gladys' Kitchen, TJ Restaurant, TruLine, Inc., First National Bank of Keystone, Bantam Market. Residents of Gary are cared for by doctors and dentists at the local Tug River Health and Dental Clinics, Tug River Continuous Care Center and the Nursing Home Group. Since petitioner does not request the relocation of its transmitter site, a gain and loss area study is not required. Moreover, since the proposed site will not provide a 70 dBu signal over 50% or more of any urbanized area, a *Tuck* analysis is not necessary.³

¹ *Cedar Bluff, Virginia and Gary West Virginia*, 17 FCC Rcd 19195 (2002).

² See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("Change of Community").

³ See *Headland, Alabama and Chattahoochee, Florida*, 10 FCC Rcd 10352 (1995), *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951), *RKO General, Inc.*, 5 FCC Rcd 3222 (1990), and *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

3. We believe the public interest would be served by reallocating Channel 299C3 to Gary, West Virginia, since it would provide the community with its first local aural transmission service, without depriving Cedar Bluff of its sole local service.⁴ An engineering analysis has determined that Channel 299C3 can be reallocated to Gary without the imposition of site restriction at petitioner's presently authorized site.⁵ In accordance with Section 1.240(i) of the Commission's Rules, we modify Station WHQX(FM)'s license to specify operation on Channel 299C3 at Gary, West Virginia, as its new community of license.

4. Accordingly, pursuant to the authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective, September 15, 2003, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Cedar Bluff, Virginia	---
Gary, West Virginia	299C3

5. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Monterey Licenses, LLC, Station WHQX(FM), IS MODIFIED to specify operation on Channel 299C3 at Gary, West Virginia, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility.
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment,

⁴ Station WYRV(AM) would remain licensed to the community.

⁵The coordinates for Channel 299C3 at Gary are 37-08-00 North Latitude and 81-35-43 West Longitude.

if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Monterey Licenses, LLC, licensee of Station WHQX(FM), is required to submit a rule making fee addition to the fee required for the application to effect the change in community of license.

7 IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to the following:

Monterey Licenses, LLC
2511 Garden Road, Building A, Suite 104
Monterey, California 93940

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9 For further information concerning this proceeding, contact Sharon P. McDonald, Media Bureau, (202) 418-2180

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief, Audio Division
Media Bureau